IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 85 OF 2006.

Raghunath Dnyanu Patil and another ... Appellants.
Versus.
Sarjerao Dnyanu Dhulap & others. ... Respondents.

Shri S.G.Thorat for the Appellants.

Shri N.G.Ghotekar for the Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 10th April, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellant and the learned Advocate appearing for Respondent No.2. The Advocate for the Applicant states that the notice is duly served to the Respondent No.1 and 3. The statement is accepted. Taken up for hearing forthwith.

2. The Appellants are claimants in a claim under section 166 of the Motor Vehicles Act, 1988. The learned Member of the Motor Accident Claims Tribunal partly allowed the claim and granted compensation of Rs.66,000/- with 9% interest per annum in favour of the Appellants. There is no dispute between the parties that in the typed copy of Judgment annexed to the Memorandum of Appeal due to typographical error the compensation amount is mentioned as Rs.88,000/-.

3. The learned Advocate for the Appellants submitted that the Tribunal found that the Appellants were entitled to compensation of Rs.1,32,000/-. However, on account of contributory negligence, the amount is reduced to Rs.88,000/-. He submitted that after the accident the deceased was hospitalised and succumbed to his injuries after 10 days of hospitalisation. He submitted that though it is established in evidence that the medical expenses were incurred for the treatment of the deceased, no amount has been awarded on that count. He submitted that the multiplier of 10 applied by the Tribunal is on the lower side. He submitted that more amount ought to have been granted on account of loss of consortium and loss of estate etc. The learned Counsel appearing for the Respondent No.2 supported the impugned Judgment and Award and stated that no interference is required with the impugned Judgment and Award.

4. I have considered the submissions. Considering the evidence on record, it is very difficult to find fault with the finding recorded by the Tribunal as regards the contributory negligence. For calculating the compensation, the Tribunal has proceeded on the footing that the income of the deceased was Rs.1500/- per month in the absence of any clear evidence about the

salary drawn by him. The Tribunal deducted 1/3rd amount towards personal expenses of the deceased. Considering the respective ages of the Appellants who are parents of the deceased, multiplier of 10 has been applied. The Tribunal has awarded compensation of Rs.12,000/- on account of love and affection and funeral expenses. The Tribunal held that the Appellants are entitled to compensation of Rs.1,32,000/-. However, the compensation has been reduced to Rs.66,000/- considering the contributory negligence.

5. The Appellant No.2, the mother of the deceased, has stepped into the witness box and she has stated that after the accident her son was taken to CPR Hospital and thereafter he was shifted to Lotus Hospital, Kolhapur. The deceased survived for 10 days and thereafter succumbed to injuries. The Claimants have produced hospital bill in the sum of Rs.17,995/-. She stated that the total expenditure incurred for treatment was Rs.50,000/-. She also produced certain bills showing that medicines were purchased during hospitalisation of the deceased. Dr.Abhijeet Vasudev Dighavadekar was examined as a witness by the Appellants. He is a consultant attached to Lotus Hospital at Kolhapur. He described the injuries sustained by the deceased. He stated that the deceased had suffered multiple injuries such as fracture pelvic, fracture tibia compound grade

III and head injury and he was unconscious. He stated that the deceased was admitted in Lotus Hospital on 25th July 2000 and he died on 4th August 2000. Dr.Abdul Gafur, Medical Superintendent of the Lotus Hospital was also examined. He proved in evidence that a sum of Rs.17,995/- was paid as hospital charges by the Appellants. There is no reason to deprive the Appellants of the compensation on account of payment of hospitalisation charges. A reasonable amount will have to be awarded on account of expenses incurred on purchase of medicines as the deceased was lying in unconscious condition in the hospital for 10 days. Additional amount will have to be awarded on account of travelling expenses. A total sum of Rs.14,000/- can be awarded on these two counts. Thus a sum of Rs.32,000/- deserves to be awarded on account of medical expenses including the expenses for hospitalisation.

6. As far as the conventional amount on account of funeral expenses and loss of consortium is concerned, an amount of Rs.15,000/- deserves to be awarded. The Tribunal has stated that the age of the deceased was 28 years. However, the Appellant No.2 in her evidence has stated that the age of her son was 23 years. She has produced School leaving certificate of the deceased. The Tribunal has applied the multiplier of 10. There is no cross-examination of the mother of the deceased on

the age of the deceased. The Apex Court has recently held that in India for age group of 20 to 24 highest multiplier of 18 can be applied. However considering the respective ages of the dependants, multiplier of 12 will have to be applied. The mother of the deceased has stated that the deceased was employed in "Nav Founders" at MIDC, Shirol and was drawing salary of Rs.2100/- p.m. These was no reason to discard the said case only on the ground that in Application for Compensation his income was disclosed as Rs.3000/- p.m. The income can be safely taken to be Rs.2100/- p.m. Thus from income of Rs.2100/- p.m. after deducting 1/3rd for personal expenditure the yearly income comes to Rs.16,800/-. Taking multiplier of 12, the compensation will be Rs.2,01,600/-. The Appellants are also entitled to the usual amount of Rs.15,000/- on account of loss of consortium, funeral expenses etc. and a sum of Rs.32,000/- on account of expenses for hospitalisation and medicines. Thus the total amount comes to Rs.2,48,600/-. A deduction of 50% will have to be made on account of contributory negligence. Taking a round figure, total compensation of Rs.1,25,000/- inclusive of no-fault liability will be payable to the Appellants.

7. Hence the following order is passed:

i) The Appeal is partly allowed.

ii) The impugned Judgment and Award dated 18th November 2004 is modified and it is held that the Opponents Nos.1 to 3 (Respondents Nos.1 to 3) herein will jointly and severally pay a sum of Rs.1,25,000/- to the Appellants (inclusive of the amount payable under no-fault liability) together with 9% interest per annum from the date of filing of the claim petition till realisation. The Appellant will be also entitled to proportionate costs of the claim petition. The amount which may be deposited shall be paid over to the Appellant No.1 by account payee cheque. The Respondent No.2 will comply with the Award within a period of three months.

iii) There will be no order as to costs in this Appeal.

Judge.